

Bay Area Air Quality Management District  
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## **APPROVED MINUTES**

Summary of Board of Directors  
Legislative Committee Meeting  
Monday, December 6, 2010

- Call to Order:** Chairperson Susan Garner called the meeting to order at 9:45 a.m.
- Roll Call:** Chairperson Susan Garner, Vice Chairperson Carol Klatt, and Directors Chris Daly, Scott Haggerty, Jennifer Hosterman, and David Hudson
- Absent:** Directors Tom Bates, Ash Kalra, and Nate Miley
- Also Present:** Board Chairperson Brad Wagenknecht and Director Pamela Torliatt
- Public Comments:** There were no public comments.

### **Approval of Minutes of October 4, 2010:**

**Committee Action:** Director Hosterman made a motion to approve the October 4, 2010 Legislative Committee minutes; Director Hudson seconded the motion; carried unanimously without objection.

### **Potential Legislative Agenda for 2011**

Senior Advanced Projects Advisor, Tom Addison, gave the staff presentation and discussed the Governor's release of suggested bill proposals for cuts to close the \$28 billion deficit, which he said is likely to result in cuts to State programs, new efforts to borrow unprotected, local revenues, and result in difficulty in passing new programs. Staff's recommendation is to protect existing programs and revenues from rollbacks and cuts.

Mr. Addison stated staff is proposing the District co-sponsor with the Metropolitan Transportation Commission (MTC) a bill that deals with a transit benefit ordinance. The City and County of San Francisco and the cities of Berkeley and Richmond have adopted similar ordinances which require employers to pay for transit passes with pre-tax dollars. The concept allows for benefits to both employees and employers by saving money in State employment taxes, as well through reductions of congestion and emissions. He noted MTC representative, Rebecca Long, is present to answer questions.

### Committee Member Comments/Questions:

Directors briefly discussed with Mr. Addison the make-up of the new Senate and Assembly which is virtually unchanged and examples of employers currently taking advantage of the pre-

employment tax concept. They discussed the ordinance's structure, potential for providing incentives to both small and large businesses, costs of implementation, and suggestions for a small business co-op and incentives. The Committee questioned the cost of implementation versus long-term savings for employees/employers, and impacts to the state and offsets to transit agency subsidies.

In response to questions, Ms. Long said she thinks having a mandatory regional requirement on employers is a big step and would be more successful politically if applied initially to employers with 10 or more employees, while also providing outreach to smaller employers.

Mr. Addison cited positive suggestions, but said he thinks many are not politically viable and unlikely to become law. He reviewed potential bills relating to charging installations for electric vehicles, a bill regarding notification of any increase in toxins, and said the transit benefit ordinance has a realistic chance this year with added benefits of improved air quality.

Mr. Broadbent added that in the past the Board has discussed its Board size which he is not recommending again, as well as tying penalties to the CPI, and staff is trying to be conservative in its recommendations. Director Haggerty discussed potential legislative distractions from the budget, but suggested the District be careful at deciding what it will take a pass on and asked to continue to be proactive.

Public Comments: None

**Committee Action:** Director Haggerty recommended the Board of Directors accept the 2011 legislative agenda, and continue to maintain a proactive approach; Chair Wagenknecht seconded the motion; carried unanimously without objection.

### **Possible Impacts of Proposition 26 on the District**

Mr. Addison presented an overview of the recently approved Proposition 26, a Constitutional Amendment that defines a tax. He said the Proposition's passage was one of the most significant election results, as it was expected to fail until several weeks before the election and passed with a 5% margin. It was supported by Chevron, the Chamber of Commerce, the alcohol and tobacco industries, and the California Taxpayers Association. Opponents were outspent by three to one.

Mr. Addison stated the Proposition's definition is very broad, and he reviewed specific exemptions below and as outlined in the staff report:

New definition of tax: any "levy, charge, or exaction of any kind":

- Local governments (including the District) have some things exempted from being a tax:
  1. A charge imposed for a specific benefit, government service, or product directly to or for the payer that is not provided those not charged, and which does not exceed reasonable costs to the local government of conferring the benefit;

2. A charge imposed for the reasonable regulatory costs for issuing licenses and permits, performing investigations, inspection, and audits, and the administrative enforcement and adjudication thereof;
3. A fine, penalty, or other monetary charge imposed as a result of a violation of a law;
4. A charge imposed for the purchase, rental, or lease of local government property.

Mr. Addison described the following additional changes:

- New taxes require two-thirds vote (either of the people for local governments or of the Legislature);
- New burden of proof on the District to show that any new fee is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and the manner in which those costs are allocated to those paying bear a fair or reasonable relationship to the payer's burdens on, or benefits received from, the governmental activity.

He cited examples of non-exemptions as an Indirect Source Review (ISR) fee, certain taxes like an oil severance tax, fees on plastic bags to reduce the amount of litter, and a fee on alcohol.

Mr. Broadbent noted that the Budget and Finance Committee is scheduled to meet on Wednesday, December 8, 2010 and staff plans to discuss how Proposition 26 affects the District's fee structure and how it can be in line with the services provided while adhering to the new law.

Chair Wagenknecht questioned the District's ballot process for obtaining a 2/3 vote with the nine Bay Area counties, and Mr. Addison discussed the level of civic involvement needed. He added that the other new significant requirement is that the District would bear the burden to prove a change in any new fee is needed, and he said long-term implications may be significant.

Mr. Broadbent noted that the District is working with the other Special Districts in California who have the same system. Some Districts have taken the step of changing their fee rules to add in a CPI requirement, but the majority of districts did not. Staff feels confident the District can move forward and propose a fee structure.

Chair Garner suggested a plan be developed to identify existing fee gaps and how to close them. Directors addressed with Mr. Bungler, Legal Counsel, implementation of the last fee increase, cost containment efforts, and work with other attorneys of other air districts, and Mr. Bateman indicated that a cost recovery report will be completed January 2011.

#### **Committee Members' Comments:**

Chair Wagenknecht stated the Committee had also previously discussed a regional greenhouse gas (GHG) plan and asked for ideas to consider such legislation.

Public Comments: None

**Committee Action:** None; informational only.

**Time and Place of Next Meeting:** At the Call of the Chair

**Adjournment:** Meeting adjourned at 10:48 a.m.

*LS/ Lisa Harper*

Lisa Harper  
Clerk of the Boards